

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

FILED
Date: June 23, 2009
5:00 O'Clock P.M.
JEANNE HICKS, CLERK
BY: M. J. Merlitz
DEPUTY

DIVISION 6

HONORABLE THOMAS B. LINDBERG

CASE NO. CR 2008 1339

JEANNE HICKS, CLERK

BY: M. J. Merlitz, Deputy

DATE: June 23, 2009

TITLE:

STATE OF ARIZONA,

Plaintiff,

-vs-

STEVEN CARROLL DEMOCKER,

Defendant.

COUNSEL:

Yavapai County Attorney (e)

By: Joseph Butner

(For Plaintiff)

John Sears

Larry Hammond

Anne Chapman

OSBORN MALEDON, P.A.

2929 North Central Avenue, 21st Floor

Phoenix, AZ 85012

(For Defendant)

HEARING ON:

Oral Argument

NATURE OF PROCEEDINGS

COURT REPORTER

Roxanne Tarn

START TIME: 10:37 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney
Steven Carroll Democker, Defendant (in custody)
John Sears, Counsel for Defendant

This is the time set for oral argument on pending motions. The Court notes that three motions are pending for argument today and certain others have been withdrawn. The pending motions are: Motion to Compel Defendant to Provide to the State the Password to his Verizon Blackberry, Motion for an *in Camera* Inspection of Digital Images on a Memory Card Taken from Defendant's Camera, and Motion for a Court Order for Release of Divorce Documents.

With regard to inspection of the memory card, the Court is advised that the photographs on the memory card are not relevant. Counsel for the State requests that the photographs on the card not be returned but rather be destroyed. After discussion, defense counsel indicates he has no objection to the photographs, which are on the memory stick, being destroyed. The Court accepts the stipulation and directs the State to destroy them.

Argument is presented on State's Motion for a Court Order for Release of Divorce Documents. Both counsel and Christopher Kottke, attorney for the Estate of Carol Kennedy address this issue as well as the Assertion of Attorney-Client Privilege Pertaining to Release of Records filed by Mr. Kottke.

The Court **DENIES** the motion for the Court to Order release of divorce documents. The Court notes that since the privilege has been asserted, the Court does not have any more authority to waive it on behalf of the deceased than Mr. Frugé would have the authority to waive the attorney-client privilege unilaterally without consent of the client. The Court notes that Mr. Kottke and his client are independent legal agents for the estate and for the deceased and they can choose to assert or to waive the privilege as they may in the best interest of the client whose privileges are to be protected by the attorney-client privilege.

Mr. Kottke is excused.

The Motion to Compel with regard to the password-protected Blackberry is addressed.

The Court notes this is testimonial and communicative of ideas that the Court thinks is covered by the Fifth Amendment; and that this is neither something authorized by Rule 15 for the Court to require and even if Rule 15 did, there are still Fifth Amendment issues which the Court thinks are problematic for the Court's granting of the motion.

The Court **DENIES** the Motion to Compel Defendant to produce the password for the Verizon Blackberry. Recognizing, as well the assertions made that there was some attempt in the past to provide such information and the assertion indeed that we don't have any other passwords at this point that we remember that would be able to assist the Court in any event-- so it's an impossibility claim as well being presented by the defense. The Court's full comments are as noted on the record.

Counsel for the State advises the Court of the voluminous disclosure provided to defense yesterday. Counsel also advises that there are two discs containing Carolyn Kennedy's financial and divorce records that still need to be reviewed and redacted before they are released to defense. Counsel asks for leave of Court to have an additional two weeks to complete the redaction process and provide that disclosure to the defense. Defense counsel notes his concerns for the record.

The Court **GRANTS** the State's request with regard to that particular information and gives the State until July 7th to complete that disclosure.

Defense counsel advises the Court that he has sent to the State a list of a dozen witness names he would like to interview. Counsel for the State indicates the interviews will be scheduled and completed.

END TIME: 11:04 a.m.